

FILE COPY

In the Supreme Court of the United States

OF THIS TERM, 1934

No. 27.

CHARLES CLARK PROPR
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THE TENNESSEE ELECTRIC POWER COMPANY,
FRANKLIN POWER & LIGHT COMPANY,
MEMPHIS POWER & LIGHT COMPANY,
SOUTHERN TENNESSEE POWER COMPANY,
BIRMINGHAM ELECTRIC COMPANY,
MISSISSIPPI POWER COMPANY,
APPALACHIAN ELECTRIC POWER COMPANY,
CAROLINA POWER & LIGHT COMPANY,
ALABAMA POWER COMPANY,
KENTUCKY & WEST VIRGINIA POWER COMPANY, INC.,
KINGSPORT UTILITIES, INCORPORATED,
WEST TENNESSEE POWER & LIGHT COMPANY,
MISSISSIPPI POWER & LIGHT COMPANY,
EAST TENNESSEE LIGHT & POWER COMPANY,
TENNESSEE EASTERN ELECTRIC COMPANY.

Plaintiffs-Appellants.

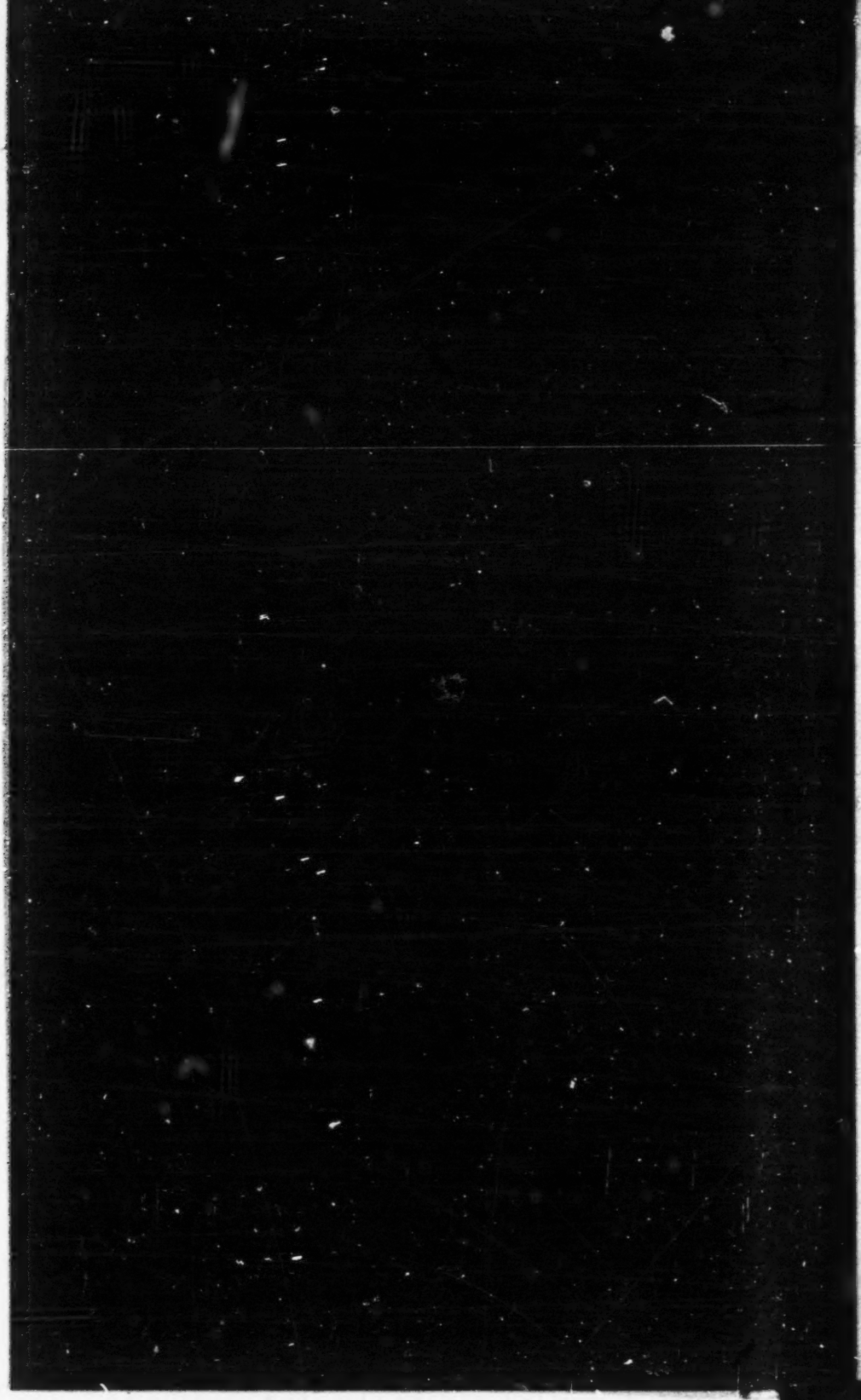
TENNESSEE VALLEY AUTHORITY, and
ARTHUR E. MORGAN, MARCOUET A. MORGAN and
DAVID E. THILFENTHAL, each individually and as an Executive
Officer and Director of Tennessee Valley Authority,

Defendants-Appellees.

On Direct Appeal from the United States District Court
For the Eastern District of Tennessee.

APPENDIX TO BRIEF BEING FOR APPELLANTS
State Statutes Relating to Public Utilities and Rates.

JOHN C. WARDEN,
CHARLES C. TRUBER,
CHARLES M. BERNARD,
RAYMOND T. JACKSON,
Counsel for Appellants.



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APPENDIX TO REPLY BRIEF FOR APPELLANTS.

Appellants have printed herein those state statutes either conferring authority to occupy streets and highways, or requiring certificates of convenience and necessity for extensions into territories already served by another utility, which state statutes are referred to on pages 95 and 97 of appellants' reply brief.

Alabama Code, 1923, Sections 7193, 7197.¹

SEC. 7193. *Power companies; additional powers conferred.*—All corporations organized under the general laws of this state, or heretofore under a special act of the legislature, and all corporations organized under the laws of any other of the United States, and which have complied with the constitution and laws of the State of Alabama as to foreign corporations, and which by their charter have the right to manufacture, supply, and sell to the public, power produced by water as a motive force, shall, after acquiring by purchase or otherwise than by condemnation, a dam site or power site comprising not less than one acre of land upon each and opposite sides of any watercourse, or after acquiring by purchase or otherwise than by condemnation a dam site comprising not less than one acre of land upon one side of any watercourse and (where the dam site on the other side of such watercourse is owned or controlled by the United States) shall have acquired this permission of the United States to attach to or use the lock, dam, or other property owned or controlled by the United States for an abutment site on the other side of such watercourse, in addition to other powers conferred by law, have the following rights, powers and authority.

* * * * *

SEC. 7197. *Use of public roads.*—Such corporations shall have the right and authority to erect and operate

¹ These sections of the code are a codification of an act approved March 12, 1907 (Alabama Acts, 1907, pp. 439 *et seq.*) which amended the act of October 1, 1903 (Alabama Acts, 1903, pp. 365 *et seq.*).

tower, pole and wire lines across, along, and on public roads, subject to the regulation of the court of county commissioners or board of revenue of the counties in which said roads are located.

Alabama Code, 1923, Section 9795.

9795. *Certificate of convenience and necessity.*—No plant, property or facility for the production, transmission, delivery, or furnishing of gas, electricity, water or steam, and no street or interurban railway shall be constructed except ordinary extensions of existing systems in the usual course of business, and no jitneys within the jurisdiction of the commission licensed, until written application is first made to the commission for the issuance of a certificate of convenience and necessity, and the issuance by the commission of such certificate. Upon the filing of any such application, and after a public hearing of all parties interested, the commission may, or may not in its discretion, issue such a certificate of convenience and necessity, and if issued, may prescribe such conditions upon the issuance as it may deem advisable. (1920, p. 38, §49.)

Carroll's Kentucky Statutes, 1936, Section 3952-25.

§3952-25. *Public convenience and necessity.*—No utility, person or corporation shall begin the construction, of any plant, equipment, property or facility for furnishing to the public any of the services enumerated in Section 1 of this act, except ordinary extensions of existing systems in the usual course of business, unless and until it shall have obtained from the commission a certificate that public convenience and necessity require such construction. Upon the filing of any application for such a certificate, and after a public hearing of all parties interested, the commission may, in its discretion, issue or refuse to issue, or issue in part and refuse in part, such a certificate of convenience and necessity. * * * Any person or group of persons may come before the commission and by petition ask that any utility be compelled to make any reasonable extensions, and the commission shall proceed to hear and determine the reasonableness of such an extension and whether the peti-

tion should be sustained either in whole or in part. * * *
(1934, c. 145, §4(1).)

Mississippi Code, 1930, Sections 1505, 1506, 1508.

SEC. 1505. *Hydro-Electric Companies Authorized to Exercise Eminent Domain*:—All companies or associations of persons incorporated or organized for the purpose of improving and developing the water power of rivers and streams for generating, distributing and selling electricity and electro-mechanical power for any purpose for which electricity or electro-mechanical power is now or may hereafter be used or applied, are empowered and authorized to exercise the right of eminent domain as provided in the chapter on that subject to condemn and take such lands as may be necessary for the establishment of their reservoirs, ponds, dams, and works, and the right of way through all lands between such reservoirs, ponds, dams and works and cities, towns and other points where light, heat or power may be consumed, to place and extend their electric wires and conductors, either under ground or on poles overhead and to keep same in repair; provided that such wires, and conductors shall be so constructed and placed as not to be dangerous to persons or property, and to do as little injury as possible. (1924, Ch. 179.)

SEC. 1506. *Erect and Maintain Poles, Along, On, and Across Highways*:—All companies or associations of persons incorporated or organized for such purposes are authorized and empowered to erect, place, and maintain their posts, wires and conductors along and across any of the public highways, streets or waters and along and across all turnpikes, railroads and canals, and also through any of the public lands; but the same shall be so constructed and placed as not to be dangerous to persons or property; nor interfere with the common use of such roads, streets, or waters; nor with the use of the wires of other wire-using companies; or more than is necessary with the convenience of any landowner. (1926, Ch. 233.)

SEC. 1508. *Right of Eminent Domain Granted to Pipe Lines*:—All companies or associations of persons, incorporated or organized, for the purpose of building or con-

structing pipe lines and appliances for the conveying and distribution of oil or gas or for the purpose of constructing, maintaining and operating lines for transmitting electricity for lighting, heating and power purposes, are hereby empowered to exercise the right of eminent domain in the manner now provided by law, to build and construct the said pipe lines and appliances along or across highways, waters, railroads, canals, and public lands, above or below grounds, but not in a manner to be dangerous to persons or property, nor to interfere with the common use of such roads, waters, railroads, canals and public lands. The board of supervisors of any county through which any such line may pass, shall have the power to regulate, within their respective limits, the manner in which such lines and appliances shall be constructed and maintained on and above the highways and bridges of the county and all such companies or associations shall be responsible in damages for any injuries caused by such construction or use thereof. (1922, Ch. 291.)

Michie's North Carolina Code, 1935, Section 1037(d).

SEC. 1037(d) *Certificate of Convenience and Necessity.* That no person, no corporation, their lessees, trustees or receivers shall hereafter begin the construction or operation of any public utility plant or system or acquire ownership or control of, either directly or indirectly, without first obtaining from the Commissioner a certificate that public convenience and necessity requires, or will require, such construction, acquisition, or operation: Provided, that this section shall not apply to new construction in progress at the time of the ratification of this act, nor to construction into territory contiguous to that already occupied and not receiving similar service from another utility, nor to construction in the ordinary conduct of business.

The Commissioner is hereby empowered to make rules governing the application for, and the issuance of such certificates of public convenience and necessity. (P. L. 1931, c. 455.)

Acts of South Carolina, 1932, c. 871, Sections 2(j) and 2(w).

§2. Duties and Restrictions Imposed Upon Electrical Utilities.—

* * * * *

(j) When ordered by the Commission after due hearing any electrical utility may be required to establish, construct, maintain and operate any reasonable extension of its existing facilities. If any such extension, however, by any electrical utility of its existing facilities will interfere with the service or system of any other electrical utility, the Commission may on complaint and after hearing either order the discontinuance of such extension or prescribe such terms and conditions with respect thereto as may be just and reasonable.

* * * * *

(w) No electrical utility, except a municipality within its corporate limits, shall hereafter begin the construction or operation of any electrical utility plant or system, or of any extension thereof, except those ordered by the Commission under the provisions of subdivision (j) of this Section, without first obtaining from the Commission a certificate that public convenience and necessity require or will require such construction or operation: *Provided, however,* That unless such construction or operation has been commenced under a limited or conditional certificate or authority as hereinafter provided this subdivision shall not be construed to require any such electrical utility to secure a certificate for an extension within any municipality or district within which it has heretofore lawfully commenced operations, or for an extension within or to territory already served by it, necessary in the ordinary course of its business, or for an extension into territory contiguous to that already occupied by it and not receiving similar service from another electrical utility; but, if any electrical utility in constructing or extending its lines, plant or system unreasonably interferes or is about to unreasonably interfere with the service or system of any other electrical utility, the Commission on complaint of the electrical utility claiming to be injuriously affected may after hearing make such order and prescribe such terms and conditions in harmony with this Act as are just and reasonable. * * *

Tennessee Code, 1932, Sections 5502-5504, 5453.

SECTION 5502. *Public Utility Not to Operate a Service Already Being Furnished by Another Public Utility, Nor Commence the Construction of a Plant or System Without a Certificate.*—No public utility shall establish or begin the construction of, or operate any line, plant, or system, or route in or into a municipality or other territory already receiving a like service from another public utility, or establish service therein, without first having obtained from the railroad and public utilities commission, after written application and hearing, a certificate that the present or future public convenience and necessity require or will require such construction, establishment, and operation, and no person or corporation not at the time a public utility shall commence the construction of any plant, line, system, or route to be operated as a public utility, or the operation of which would constitute the same, or the owner or operator thereof, a public utility as defined by law without having first obtained, in like manner, a similar certificate; provided, that this section shall not be construed to require any public utility to obtain a certificate for an extension in or about a municipality or territory where it shall theretofore have lawfully commenced operations, or for an extension into territory, whether within or without a municipality, contiguous to its route, plant, line or system, and not theretofore receiving service of a like character from another public utility, or for substitute or additional facilities in or to territory already served by it. (1923, Ch. 87, Sec. 1.)

SECTION 5503. *Upon Complaint of Interference, Commission May Grant or Refuse Certificate: Forfeiture of Certificate.*—If any public utility, in establishing, constructing, reconstructing, or extending its route, line, plant or system, shall interfere or be about to interfere with the existing route, line, plant, or system of any other public utility, the said commission, on complaint of the public utility claiming to be injuriously affected, may, after hearing, make such order and prescribe such terms and conditions in harmony with this statute as are just and reasonable. Such commission shall have power, after hearing involving the financial ability and good faith of the appli-

cant, the necessity for additional service in the municipality or territory, and such other matters as it deems relevant, to issue a certificate of public necessity and convenience, or to refuse to issue the same or to issue it for the establishment or construction of a portion only of the contemplated plant, route, line, or system or extension thereof, or for the partial exercise only of such right or privilege, and may attach to the exercise of the rights granted by said certificate such terms and conditions as to time or otherwise as in its judgment the public convenience, necessity, and protection may require, and may forfeit such certificate after issuance, for noncompliance with its terms, or provide therein for an *ipso facto* forfeiture of the same for failure to exercise the rights granted within the time fixed by the commission; provided, that nothing in this law shall be construed as requiring such certificate for a municipally owned plant, project, or development. (1923, Ch. 87, Sec. 1.)

SECTION 5504. *Certificate Not to be Granted Unless the Existing Plant or System is Inadequate: Notice of Hearing.*—The said commission shall not grant a certificate for a proposed route, plant, line, or system, or extension thereof, which will be in competition with any other route, plant, line or system, unless it shall first determine that the facilities of the existing route, plant, line, or system, are inadequate to meet the reasonable needs of the public, or the public utility operating the same refuses or neglects or is unable to or has refused or neglected, after reasonable opportunity after notice, to make such additions and extensions as may reasonably be required under the provisions of this statute. In all proceedings under this section, the commission shall give at least ten days' notice to the authorities of, and the public utilities operating in, the municipality or territory affected. (1923, Ch. 87, Sec. 2.)

SECTION 5453. No privilege or franchise hereafter granted to any public utility by the State of Tennessee or by any political subdivision thereof shall be valid until approved by said commission, such approval to be given when, after hearing, said commission determines that such privilege or franchise is necessary and proper for the public

convenience and properly conserves the public interest, and the commission shall have power, if it so approves, to impose such conditions as to construction, equipment, maintenance, service or operation as the public convenience and interest may reasonably require; provided, however, that nothing herein contained shall be construed as applying to the laying of sidings, sidetracks, or switchouts, by any public utility, and it shall not be necessary for any such public utility to obtain a certificate of convenience from the commission for such purpose. (1919, Ch. 49, Sec. 7.)

Michie's Virginia Code, 1936, Sections 4057(24), 3716, 3774c, 4072, 4066.

SEC. 4057(24). *Extension in territory now being served.*—If, from any rural territory not now being served, application be made to the State Corporation Commission by a group of five or more persons, natural or artificial, to require an extension of electric service to such territory, the Commission shall, if necessary to accomplish the purposes sought, fix a time for hearing said application, on such terms and conditions as the Commission may prescribe, and, if it be established to the satisfaction of the Commission that a proper guaranteed revenue for a sufficient number of years will accrue to any company which may be required to construct the desired extension, and that a reasonable investment will accrue to the company constructing said extension, then the Commission is hereby authorized and empowered to require the nearest, or most advantageously located electric utility company to such territory to construct such extension to such point or points in such territory and to serve such customer or customers therein, as in its judgment is right and proper. (1936, p. 1056.)

SEC. 3716. *Powers of the Commission.*—The Commission shall have power and authority to require, by its rules, regulations, and requirements, all corporations chartered under the laws of this State, and all foreign corporations doing business in this State, and all persons, partnerships and associations exercising and performing the functions of public service corporations as defined in section thirty-

eight hundred and eighty-one of the Code of Virginia, to perform and discharge any public duty or requirement imposed upon such corporations, persons, partnerships and associations by the Constitution.

SEC. 3774c. *Certain contracts must be approved by Commission.*—No contract or arrangement providing for the furnishing of management, supervisory, construction, engineering, accounting, legal, financial, or similar services, and no contract or arrangement for the purchase, sale, lease or exchange of any property right or thing other than those above enumerated, or for the purchase and/or sale of treasury bonds and/or treasury capital stock hereafter made or entered into between a public service company and any affiliated interest as defined in this act shall be valid or effective unless and until it shall have been filed with and approved by the Commission. It shall be the duty of every public service company to file with the Commission a verified copy of any such contract and arrangements hereinabove described, regardless of amount, and said general rule herein referred to shall remain in full force and effect as to all other public service companies. (1934, p. 744.)

SEC. 4072. *The State Corporation Commission may change regulations, measurements, practices, services, or acts.*—If upon investigation it shall be found that any regulation, measurement, practice, act or service of any public utility operating in this State, complained of, is unjust, unreasonable, insufficient, preferential, unjustly discriminatory or otherwise in violation of law or if it be found that any service is inadequate or that any reasonable service cannot be obtained, the State Corporation Commission shall have power to substitute therefor such other regulations, measurements, practices, service or acts and to make such order respecting, and such changes in, such regulations, measurements, practices, service or acts as shall be just and reasonable. (1914, p. 673.)

SEC. 4066. *Public utilities required to file schedules of rates and charges; changes in schedules; appeal to Supreme Court of Appeals from ruling of State Corporation Commission; unless Commission suspends schedules when*

same effective; public utilities must furnish reasonably adequate service and facilities; further as to appeals.

• • • • •

It shall be the duty of every public utility to furnish reasonably adequate service and facilities at reasonable and just rates to any person, firm or corporation along its lines desiring same and not engaged in a similar business, and to charge uniformly therefor all persons or corporations using such product under like conditions, and not in competition with such furnishing company. * * *

Michie's West Virginia Code, 1935, Section 2562 (1). (11)

SEC. 2562 (1). (11) *Application for Certificate of Public Convenience and Necessity.*—No public utility, person or corporation shall begin the construction of any plant, equipment, property or facility for furnishing to the public any of the services enumerated in section one, article two (Sec. 2553) of this chapter, nor apply for, nor obtain any franchise, license or permit from any municipality or other governmental agency except ordinary extensions of existing systems in the usual course of business, unless and until it shall obtain from the public service commission a certificate of public convenience and necessity requiring such construction, franchise, license or permit. Upon the filing of any application for such certificate, and after hearing, the commission may, in its discretion, issue or refuse to issue, or issue in part and refuse in part, such certificate of convenience and necessity. The commission shall prescribe such rules and regulations as it may deem proper for the enforcement of the provisions of this section, and in establishing that public convenience and necessity do exist the burden of proof shall be upon the applicant. (1935, c. 115.)